

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.505 and 17.8.514 pertaining to air)
quality operation fees and open burning)
fees)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On August 6, 2008, at 3:00 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., July 25, 2008, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.505 AIR QUALITY OPERATION FEES (1) through (6) remain the same.

(7) The air quality operation fee for facilities other than portable facilities or registered oil and gas well facilities is based on the actual, or estimated actual, amount of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of ~~\$500~~ 600, plus ~~\$29.96~~ 31.29 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

(8) through (13) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA

IMP: 75-2-211, 75-2-220, 75-2-234, MCA

REASON: Pursuant to 75-2-220, MCA, the department assesses air quality permit application fees, annual air quality operation fees, and open burning permit fees. In the aggregate, these fees must be sufficient to cover the department's costs of developing and administering the permitting requirements for the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the board.

Annual air quality operation fees are required for all facilities that hold an air quality permit, that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program, or that are registered oil and gas well facilities. For facilities other than portable facilities and registered oil and gas well

facilities, for which a flat administrative fee is assessed, the air quality operation fee has been based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted. The amount of money the department needs to generate through the collection of air quality operation fees depends on the legislative appropriation, the amount of fee carryover from the previous fiscal year, and the projected application fees. The emission component of the operation fee is revised also to account for changes in the total amount of pollutants emitted in the state in the previous calendar year.

The board is proposing to set the air quality operation fees to be billed in calendar year 2008. Air quality fees billed in 2008 will fund the department's activities in fiscal year 2009, and would be based on emissions from calendar year 2007.

The legislative appropriation for fiscal year 2008 was \$3,860,228. However, an amended appropriation amount for fiscal year 2008 should be noted. The fiscal year 2008 appropriation documented in MAR Notice No. 17-258, which was published at p. 795, 2007 Montana Administrative Register, issue number 12, and adopted at p. 1664, 2007 Montana Administrative Register, issue number 20, was overestimated due to a delay in receiving the actual appropriation, including the department's pay plan, from the 60th Legislature. The actual appropriation amount for fiscal year 2008 was corrected from \$3,875,703, as provided in that MAR notice, to \$3,860,228, a difference of \$15,475. This change does not impact the fiscal year 2009 operating and open burning fee rule development. The amount of the carryover from fiscal year 2007 was \$203,327. The total amount of pollutants reported for calendar year 2007 fees was 95,832 tons, and the per-ton component of the air quality operation fee was \$29.96.

In fiscal year 2009, the board is proposing to increase the administrative portion of the annual operating fee for stationary sources from \$500 to \$600. This change would provide consistency with the current fee charged for the administration of the portable source and registration programs, for which the department provides similar administrative services. Further, this change would result in an increase in department revenue of approximately \$30,000/year and, consequently, a decrease in the per-ton component of the operating fee for stationary sources.

The appropriation for fiscal year 2009 is \$3,966,080, an increase of \$105,852 from this fiscal year. The projected carryover from fiscal year 2008 is \$0. The total amount of pollutants reported for 2008 fees is 98,661 tons. Based upon the appropriation, the estimated carryover, the projected permit application fees, and the emission inventory, in order to cover the department's costs of developing and administering the air quality permitting program, it is necessary for the board to increase the per-ton charge to \$31.29. Therefore, the board is proposing to amend ARM 17.8.505(7) by replacing the per-ton charge of \$29.96 with \$31.29.

In calendar year 2007, the total amount of fees assessed was \$3,541,368. The amount of fees that would be assessed in 2008, to meet the fiscal year 2009 budget, would be \$3,832,302, for an increase of \$290,934. In calendar year 2008, fees would be assessed for 1,243 facilities.

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (4) remain the same.

(5) The air quality major open burning permit application fee is the greater of the following, as adjusted by any amount determined pursuant to (6):

(a) a fee calculated using the following formula:

tons of total particulate emitted in the previous
appropriate calendar year,
multiplied by ~~\$21.07~~ 17.40; plus
tons of oxides of nitrogen emitted in the previous
appropriate calendar year,
multiplied by ~~\$5.27~~ 4.35; plus
tons of volatile organic compounds emitted in the
previous appropriate calendar year,
multiplied by ~~\$5.27~~ 4.35; or

(b) through (7) remain the same.

AUTH: 75-2-111, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: The board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2009. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the department develops a budget reflecting the cost the department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions from the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2007, the major open burners reported 8,787 tons of emissions, compared to 4,826 tons for calendar year 2006, or an increase of 3,961 tons.

The operating budget for the 12 major open burners in fiscal year 2009 is \$77,278, compared to a budget of \$46,159 for fiscal year 2008. The increase of \$31,119 in major open burning funding is due to increases of \$29,267 in personnel costs as a result of increased use of staff time in the Smoke Management Program, particularly with regard to forecasting dispersion conditions for prescribed burning. The increase in the need for additional staff time also reflects an increase in workload for permitting functions and planning and advisory activities relating to smoke management and coordination activities with the Idaho/Montana Airshed Group. The department also now manages the smoke emissions database, the Airshed Management System (AMS), and the budget reflects staff time costs associated with database analysis and maintenance. The increases are offset by decreases of \$2,281 in travel costs. The budget also reflects the elimination of the cost of an internet server at \$1,660 as the department now administers AMS and does not require this service any longer. The budget also includes an increase of indirect costs as a result of the increases in personnel and operating costs. The board is proposing to decrease the permit fees from \$21.07 per ton of particulate,

\$5.27 per ton of oxides of nitrogen, and \$5.27 per ton of volatile organic compounds emitted to \$17.40, \$4.35, and \$4.35, respectively.

The cumulative amount of the fees would equal the budget of \$77,278. This amount would be distributed among the 12 major open burners.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., August 14, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

BY: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, July 7, 2008.